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SUPREME COURT OF THE UNITED STATES.

No. 57.

JOSEPH EVANS, PLAINTIFF IN ERROR,

VERSUS

STERLING H. GEE.

ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF ALABAMA.

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UNITED STATES OF AMERICA.

The President of the United States to the Judges of the Circuit Court of the United States for the ninth judicial circuit, and Southern District of Alabama.

Because in the record and proceedings, as also in the rendition of judgement on a motion to quash an execution bond, &c., which is in the said circuit court before you, between Joseph Evans, administrator, and in right of the heirs and representatives of Thomas Evans, deceased, plaintiffs, and Sterling H. Gee, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears; and it being fit, if error there be, the same should be duly corrected, and full and speedy justice be done the parties aforesaid. You are hereby commanded, if judgement be rendered, that under your seal, distinctly and speedily, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next in the Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further proceedings therein, to correct the error, what of right, according to law, and the custom of the United States, should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of the [SEAL.] said circuit court, this second Monday of January, in the year of our Lord one thousand eight hundred and thirty-eight.

Issued the seventeenth day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

Attest: DAVID FILES,
Clk. So. Dist. Ala.

UNITED STATES OF AMERICA.

To Sterling H. Gee or Gordon, Campbell, and Chandler, your attornies, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the ninth judicial circuit, wherein Joseph Evans, administrator of Thomas Evans,

dec'd, and in right of the heirs, &c., is plaintiff, and Sterling H. Gee is defendant in error, to shew cause, if any there be, why the judgement in the said writ of error should not be corrected, and speedy justice done.

Witness the honorable John McKinley, one of the justices of the Supreme Court of the United States, this seventeenth day of May, A. D. 1838.

J. MCKINLEY,
Associate Justice of the Supreme Court of the United States.

A true copy of the within citation duly served on us in open court this 15 May, 1838.

GORDON, CAMPBELL, & CHANDLER
Attos. for Deft.

Circuit Court of the United States for the Ninth Judicial Circuit, Southern District of Alabama.

The heirs and representatives of
THOMAS EVANS, dec'd,
vs.
STERLING H. GEE.
} In error.

Know all men by these presents that we, Joseph Evans, administrators of Thomas Evans, deceased, James Battle, and George M. Rives, are held and firmly bound unto the above named Sterling H. Gee in the sum of twelve thousand dollars, to be paid to the said Sterling H. Gee, his executors or administrators; to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 16th day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

Whereas the above named Joseph Evans has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgement in the above entitled suit by the circuit court of the United States for the ninth judicial circuit and southern district of Alabama.

Now, therefore, the condition of this obligation is such, that if the above named Joseph Evans shall prosecute his said writ of error to effect, and answer all damages and costs; if he shall fail to make good his plea then this obligation shall be void, otherwise the same be and remain in full force and virtue.

JOSIAH S. EVANS, [SEAL.]
JAMES BATTLE, [SEAL.]
GEO. M. RIVES, [SEAL.]

Signed, sealed, and delivered in presence of
DAVID FILES, Clerk, &c.

I, David Files, clerk of the circuit court of the United States for the ninth judicial circuit, and southern district of Alabama, do hereby certify that the above is a true copy of the original bond on file in my office.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand and affixed the seal of the [SEAL.] said circuit court this fifteenth day of June, in the year of our Lord one thousand eight hundred and thirty-eight.

DAVID FILES,
Clk. So. Dist. Ala.

Pleas had before the honorable the circuit court of the United States for the ninth judicial circuit and southern district of Alabama, at a term thereof begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight, before *before* his honor John McKinley, presiding judge of said court.

Be it remembered, that heretofore, to wit, on the sixteenth day of January, in the year of our Lord one thousand eight hundred and thirty-five, Sterling H. Gee sued out of said court his writ of capias ad respond*e*dum against Thomas Evans, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District Court of the United States for the Southern District of Alabama.

The President of the United States to the marshall of said district, greeting:

You are hereby commanded to take the body of Thomas Evans, who is a citizen of the State of Alabama, and him safely keep, so that you have him before the hon. the judge of said court, at the place of holding said court at Mobile, on the first Monday of May next, to answer unto Sterling H. Gee, who is a citizen of the State of North Carolina, in a plea of trespass on the case in assumpsit, to the damage of the said plaintiffs ten thousand dollars. Herein fail not, and have you then and there this writ.

Witness the Hon. William Crawford, judge of the said court, [SEAL.] this 2nd Monday of December, in the year of our Lord one thousand eight hundred and thirty-four.

Issued this 16th day of January, in the year of our Lord one thousand eight hundred and thirty-five.

Attest: DAVID FILES,
Clk. So. Dist. Ala.

We acknowledge ourselves security for costs at the instance of the plaintiffs in the above suit.

GORDON & GOLDTHWAITE.

This action is founded on a bill of exchange drawn by one Harris Smith Evans, in favor of defendant, and by him endorsed on one George M. Rives, Mobile, for five thousand three hundred and fifty dollars, dated Wilcox county, Dec'r 16th, 1834, and due twelve months after date, negotiable and payable at the office of discount and deposite, Branch Bank of the United States, at Mobile, for value rec'd, and protested for non-acceptance.

GORDON & GOLDTHWAITE,
Pl'ffs. Attos.

Rec'd Jan'y 21st, '35. Executed 20th February, 1835.
ROBT. L. CRAWFORD,
U. S. Marshall.
By J. A. BEAL, *D. M.*

And afterwards, to wit, at a term of the court aforesaid, begun and held in and for said district at Mobile, on the second Monday of May, in the year af our Lord one thousand eight hundred and thirty-five, the plaintiffs filed their declaration in the words and figures as follows, to wit:

UNITED STATES OF AMERICA,
District Court of the United States for the Southern District of Alabama.

MAY TERM, 1835.

Sterling H. Gee, who is a citizen of the State of North Carolina, by attorney, complains of Thomas Evans, who is a citizen of the State of Alabama, in custody, &c., of a plea of trespass on the case, &c. For that, whereas one Harris Smith Evans, heretofore, to wit, on the sixteenth day of December, 1834, at Wilcox county, in the district aforesaid, made his certain bill of exchange in writing, bearing date the day and year aforesaid; and thereby, then and there, twelve months after the date thereof, requested one George M. Rives to pay to the order of the said defendant, five thousand three hundred and fifty dollars, for value received, negotiable and payable at the office of discount and deposite, Branch Bank of the , at Mobile, and then and there directed the same to the said George M. Rives, at Mobile; and the said defendant, to whom or to whose order the payment of the said sum in the said bill specified, was to be made afterwards, and before the payment thereof, endorsed the same, and then and there delivered the said bill of exchange, so endorsed as aforesaid, to the said plaintiffs. And the said plaintiffs avers that, afterwards, to wit, on the 31st day of December, 1834, the said bill of exchange was duly presented and shown to the said

George M. Rives, and acceptance thereof demanded; but that neither the said Rives, nor any one in his behalf, did, or would, then, or at any time thereafter, accept the same; of all which said several premises, afterwards, to wit, on the day and year last aforesaid had notice.

By means whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay to the said plaintiffs the said sum in the said bill of exchange specified, according to the tenor and effect thereof, and of his said endorsement thereon; and being so liable, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said plaintiffs to pay him the said sum of money in the said bill of exchange specified, when he should be thereunto afterwards requested. Yet the said defendant, though often requested, has not paid the said plaintiffs the said sum of money in the said bill of exchange specified, or any part thereof, but the same to pay has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of the said plaintiffs of ten thousand dollars; wherefore he sues.

GORDON & GOLDTHWAITE,
Plffs. Attys.

And afterwards, to wit, at the same term of the court aforesaid, begun and held in and for the district aforesaid, at Mobile, the said defendant filed the following plea, to wit:

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of Alabama.

Term of the first Monday in May, 1835.

And the said Thomas Evans, by his attorneys, comes and defends the wrong and injury when, &c., and says that the said declaration and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said Sterling H. Gee to have or maintain his aforesaid action thereof against him, the said Thomas Evans; and that the said Thomas Evans is not bound by the law of the land to answer the same, and this he is ready to verify. Wherefore, for want of sufficient declaration in this behalf, the said Thomas Evans prays judgement; and that the said Sterling H. Gee may be bound from having or maintaining his aforesaid action thereof against him, &c., &c.

G. N. STEWART,
Atto. for Deft.

And afterwards, to wit, at a term of the court aforesaid, begun and held in and for the district aforesaid, at *at* Mobile, on the second Monday of December, in the year of our Lord one thousand eight hundred and thirty-five, before his honor William Crawford, judge of the said court, the following proceedings were had, to wit:

This day came the parties by their attorneys; whereupon also came a jury of twelve good and lawful men; and thereupon the said plaintiffs takes a non-suit; wherefore it is considered by the court that the said plaintiffs take nothing by his said writ, that said defendant go hence, without day, and recover against said plaintiffs his costs.

And afterwards, to wit, at the same term of the court aforesaid, begun and held in the district aforesaid, at Mobile, the said plaintiffs made a motion to set aside non-suit.

Motion to set aside non-suit.

After argument by counsel, it is ordered by the court that the non-suit taken at this term be set aside, and the cause continued.

And afterwards, to wit, at a term of the court aforesaid, begun and held in and for the district aforesaid, at Mobile, on the first Monday of May, in the year of our Lord one thousand eight hundred and thirty-six, before his honor William Crawford, judge of the said court, the following proceedings were had, to wit:

This day came the parties by their attorneys; whereupon also came the following jury, to wit: J. H. Krafft, S. P. Bullard, F. K. West, P. McCollum, J. Bryant, W. Hatter, U. Smith, S. Smith, J. Etheridge, E. Phillips, and W. Ely, twelve good and lawful men, who being elected, tried, and sworn, upon their oaths do say, that we, the jury, find for the plaintiffs, and assess his damage at six thousand four hundred and ninety-three-dollars sixty-eight cents. Wherefore, it is considered by the court that the said Sterling H. Gee, plaintiffs, do recover against the said Thomas Evans, defendant, the said sum of six thousand four hundred and ninety-three dollars sixty-eight cents, the damages aforesaid, in manner aforesaid, by the jury aforesaid, assessed, together with his costs.

And afterwards, to wit, at a term of the circuit court of the United States for the ninth judicial circuit, and southern district of Alabama, begun and held in and for said district, at Mobile, on the second Monday of *of* May, in the year of our Lord one thousand eight hundred and thirty-eight, before his honor John McKinley, the presiding judge of the said court, the defendant made a motion to quash the execution, to wit:

Motion to quash fieri facias.

After argument by counsel, it is ordered by the court that defendant's motion be overruled.

And whereupon, during said argument, the defendant, by his counsel, tendered to his honor, the presiding judge, the following bill of exception; which said bill, and the exhibits thereto annexed, are in the words and figures following, to wit:

The heirs and representatives of THOMAS EVANS, dec'd, by JOSEPH EVANS, administrator, &c.
vs.
STERLING H. GEE.

Be it remembered, that on the trial of this motion, that plaintiffs read the execution, bond, and affidavit.

(Execution.)

UNITED STATES OF AMERICA,
Circuit Court of the United States for the Ninth Judicial Circuit, and Southern District of Alabama.

The President of the United States to the Marshal of said district, greeting:

You are hereby commanded as before, that of the goods and chattels, lands and tenements, of Thomas Evans, late in said district, you cause to be made the sum of six thousand eight hundred and seventy-one $\frac{33}{100}$ dollars, with interest thereon from the fourth day of May, A. D. 1836, which Sterling H. Gee, at a term of said circuit court, begun and held on the first Monday of May, 1836, has recovered against him for damages, also the sum of six $\frac{17}{100}$ dollars, which, to the said Sterling H. , in the same court, were adjudged for costs and charges in that behalf expended, whereof the said Thomas is convicted, as appears of record; and that you have the said sums of money before the said circuit court on the second Monday of April next, at the place of holding said court, at Mobile, to render to the said Sterling H. of the damages and costs aforesaid; and have you then and there this writ.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, this second Monday of October, in the year of our Lord one thousand eight hundred and thirty-seven.

Issued the 16th day of March, in the year of our Lord one thousand eight hundred and thirty-eight.

Attest:

DAVID FILES,
Clk. So. Dist. Ala.

Received 17 March, 1838. 27th day of March, 1838, levied on the following negroes: July, Jack, James, Dianna, Zelaa, Rice, Dolly, Lindon, Isirall, and George, to be sold at Mobile 9th April, 1838.

ROBT. L. CRAWFORD, *U. S. M.*
D. WHITE, *Dept. M.*

April 9th, 1838. Delivery bond forfeited.

ROBT. L. CRAWFORD.

(Bond.)

COURT OF THE UNITED STATES,

For the Ninth Judicial Circuit, and Southern of Alabama.

Know all men by these presents, that we, Thomas Evans , are held and firmly bound unto Sterling H. Gee in the just and full sum of thirteen thousand seven hundred and forty-one $\frac{65}{100}$ dollars, lawful money of the United States, which sum well and truly to be paid, we bind ourselves, jointly and severally, each of our heirs, executors, &c., firmly by these presents.

Given under our hands and seals this twenty-seventh day of March, 1838, in the district aforesaid.

The condition of the above obligation is such, that whereas a levy has been made by David White, deputy marshal for the aforesaid district, on the following described property, to wit: On ten negroes, one named July, age thirty years, and Jack, age thirty-eight years, and James, age twenty-five years, and Dianna, age twenty-one years, and Tilda, aged twenty-three years, and Rose, aged eighteen years, and Doly, aged twenty-five years, and London, aged twenty years, and Izeral, age twenty years, and George, age twenty-five years, the property of said Thomas Evans, by virtue of an execution issued from the office of the clerk of the circuit court of the United States for the southern district of Alabama, tested on the first Monday of May, 1836, and to the marshal aforesaid, delivered on the seventeenth day of March, 1838, to satisfy a judgement rendered in the said circuit court held at Mobile on the first Monday of May, 1836, in favor of Sterling H. Gee, for the sum of six thousand eight hundred and seventy-one $\frac{33}{100}$ dollars damages, and the further sum of six dollars and seventeen cents, for cost of suit against Thomas Evans.

Now, if the above bound Thomas Evans shall and will, well and truly deliver the above described property to the marshal of said district, or his successor in office, or his deputy or deputies, on the second Monday of April next, at the circuit court-house of the United States, at Mobile, by 12 o'clock noon, the day appointed for the delivery and sale of the same, then this obligation shall be null and void; otherwise, to remain in full force and effect.

JOSIAH S. EVANS, [SEAL.]
A. E. EVANS, [SEAL.]
JOHN A. EVANS. [SEAL.]

The condition of the within condition and obligation was this day forfeited.

Witness my hand and seal this ninth day of April, 1838.

ROBT. L. CRAWFORD, *U. S. M.* [SEAL.]

In support of their motion to quash, and moved the court upon that shewing to quash the said bond, execution, &c., but the court overruled the motion, and gave judgement sustaining the execution, to which plaintiffs excepts, and files this their bill of exceptions, and pray that it may be signed, sealed, and made a part of the record in this cause, which is done accordingly.

J. McKINLEY. [SEAL.]

I, David Files, clerk of the circuit court of the United States, for the ninth judicial circuit, and southern district of Alabama, do hereby certify that the above and beforegoing seven pages contain a full, true, and perfect exemplification of the record and proceedings of a certain suit lately pending and determined in the court aforesaid, wherein Sterling H. Gee was plaintiffs, and Thomas Evans was defendant.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand and affixed the seal of the [SEAL.] said circuit court this twentieth day of June, in the year of our Lord one thousand eight hundred and thirty-eight.

DAVID FILES,
Clk. Sou. Dist. Ala.